

("ODI"). In November 2007, Verizon Wireless announced that it will provide customers the option to use any device that meets the company's published technical standards, which includes the ability to physically connect to the Verizon Wireless network, and to use any application the customer chooses on these devices.³⁴ This new choice will be available to all Verizon Wireless consumers by the end of 2008. ODI will spur innovation and expand customer choice of products available to run on the company's network. Through this openness, Verizon Wireless expects an innovative array of devices and applications to be deployed on its network.

For example, ALLTEL's customers will be able to use phones not only offered by Verizon Wireless but also by other CDMA carriers and smaller manufacturers that do not sell their phones through any carrier. These products, however, will not be limited to just wireless phones. The growth potential lies in connections—not only people-to-people connections, but connections of all kinds. Some of the ideas that developers are working on are already conceptualized, like medical devices and gaming consoles, but many have yet to be defined. ALLTEL's customers, as well as all wireless consumers, will benefit from this expanded choice and innovation as a result of Verizon Wireless' ODI.

e. ALLTEL's Customers Will Have Access to the Greater Variety of Wireless Devices Verizon Wireless Traditionally Offers to Its Customers

Verizon Wireless has traditionally offered a wide variety of wireless devices, including the most innovative and sophisticated handsets, to its customers. This is largely due to economies of scale arising from a much larger subscriber base, enhanced access to capital, and advanced technological and software capabilities. The transfer of control of ALLTEL to Verizon

³⁴ Verizon Wireless to Introduce 'Any Apps, Any Device' Option for Customers in 2008, News Release (Nov. 27, 2007), <http://news.vzw.com/news/2007/11/pr2007-11-27.html> (last visited June 10, 2008).

Wireless will permit ALLTEL's customers to gain access to the wider variety of handsets Verizon Wireless directly offers to its customers. ALLTEL's customers currently have access to 15 models of phones, 9 PDA/Smartphones or Blackberry devices, and 4 PC cards. In contrast, Verizon Wireless offers over 30 models of phones (a selection that includes the broadest array of Hearing Aid Compatible compliant devices of any national carrier), 13 PDA/Smartphones or Blackberry devices, and 8 PC cards. The full array of handsets available to Verizon Wireless customers and, after the transaction, to ALLTEL customers includes Verizon Wireless' branded handsets and devices that take advantage of the faster speeds provided by the EvDO Rev. A network enhancements. These devices, which will be available to ALLTEL's customers for the first time, include Verizon Wireless' USB727 wireless modem, V740 ExpressCard, AirCard 595 and PC5750 PC Cards, all of which are fully compatible with the company's enhanced wireless broadband networks.

f. ALLTEL's Customers Will Have Access to Enhanced Service Plans

Verizon Wireless offers a variety of service plans with data bundles and packaged offerings. All Verizon Wireless bundled service plans include unlimited nights and weekends and unlimited mobile-to-mobile minutes. ALLTEL's bundled service plans also include unlimited nights and weekends and unlimited mobile-to-mobile minutes. The proposed transaction will immediately expand the unlimited mobile-to-mobile minutes calling base of both companies to 80 million subscribers. ALLTEL's customers could thus place unlimited mobile-to-mobile calls to an exponentially expanded number of people (from 13 to 80 million) without tapping into their monthly minutes bucket. This will result in significant cost savings for ALLTEL's customers. Likewise, Verizon Wireless' mobile-to-mobile in-network calling base will increase from 67 to 80 million, again generating cost savings for customers.

ALLTEL's customers will also benefit for the first time from Verizon Wireless'

Nationwide and America's Choice plans, which provide a choice in the amounts of bundled minutes together with no roaming or long distance charges for calls on the Verizon Wireless preferred network in the United States. ALLTEL currently charges its customers \$0.59 per minute for nationwide roaming and \$0.40 per long distance minute while roaming in certain parts of the United States that are not part of its National Freedom coverage area. Verizon Wireless also offers family/small group and shared minute plans for multiple-user households and small businesses, plans targeted to business accounts with over 100 lines and national accounts with over 1,000 lines, and a national pre-paid product that enables individuals to obtain wireless voice services without a long-term contract by paying in advance.

On February 19, 2008, Verizon Wireless was the first major wireless carrier to offer truly unlimited flat rate voice plans. The basic unlimited voice plan was offered at \$99.99 a month with unlimited minutes. ALLTEL's customers will have the benefit of this plan and future innovations from Verizon Wireless.

3. The Proposed Transaction Will Yield Extensive Benefits for Existing and Future Verizon Wireless Customers

In addition to producing substantial benefits for ALLTEL customers, the proposed transaction will also yield extensive benefits for existing Verizon Wireless customers and, indeed, for all mobile customers in these areas. The transaction expands Verizon Wireless' licensed footprint into all or portions of 54 new CMAs where the company currently has no cellular or PCS spectrum, while adding spectrum capacity to support increasingly popular broadband services and applications in others. Verizon Wireless customers will thus enjoy the expansion of seamless network access and wireless broadband services, cost savings through

increased efficiencies and greater economies of scale, and the formation of a stronger competitor in the already highly competitive wireless market.

a. Additional Spectrum Will Allow for Greater Roll-out of Broadband and Network Access

The proposed transaction will benefit Verizon Wireless' existing and future customers by expanding the area in which Verizon Wireless can offer wireless broadband services.

Specifically, ALLTEL holds spectrum and provides service in 11 rural CMAs where Verizon Wireless does not currently hold either 800 MHz cellular or 1.9 GHz PCS spectrum.³⁵ In addition, ALLTEL holds spectrum in parts of 43 other CMAs where Verizon Wireless lacks complete 800 MHz or 2 GHz license coverage.³⁶

The transaction will thus provide Verizon Wireless with access to areas—particularly rural areas with large geographic footprints—in which it is not currently providing service. Customers in those areas, in turn, will have access to Verizon Wireless' broadband services locally. Many of the rural areas served by ALLTEL are adjacent to major metropolitan areas served by Verizon Wireless.³⁷ ALLTEL cannot provide service in the adjacent metropolitan areas and therefore relies on roaming agreements when its customers travel or commute to those areas. Likewise, Verizon Wireless relies on roaming agreements when its customers from the metropolitan areas travel to the adjacent rural areas served by ALLTEL. The merger will allow

³⁵ See n.211, *supra*.

³⁶ See n.22, *supra*.

³⁷ These include CMA002, Los Angeles; CMA003, Chicago; CMA005, Detroit; CMA008, Washington; CMA009, Dallas; CMA011, St. Louis; CMA012, Miami; CMA013, Pittsburgh; CMA015, Minneapolis; CMA017, Atlanta; CMA018, San Diego; CMA019, Denver - Boulder; CMA021, Milwaukee; CMA024, Kansas City; CMA031, Columbus; CMA033, San Antonio; CMA036, Memphis; CMA039, Salt Lake City; CMA041, Birmingham, and others. All told, ALLTEL has cellular or PCS spectrum adjacent to 75 MSAs where it does not hold similar spectrum.

customers of both companies in the adjacent and served areas to receive contiguous coverage at metropolitan-rural area boundaries and receive more extensive seamless on-network service.

In addition to increasing Verizon Wireless' coverage footprint by integrating ALLTEL's CDMA operations in areas where Verizon Wireless does not currently operate, the proposed merger will enhance Verizon Wireless' ability to deploy new services in areas where its coverage overlaps with ALLTEL. ALLTEL has network assets—including both spectrum and radio towers—that can be incorporated into the Verizon Wireless network. Additional towers and transmitting facilities could enhance Verizon Wireless' signal strength in some areas and enable better allocation of network resources in others. ALLTEL's facilities will also expedite the roll-out of Verizon Wireless' 700 MHz LTE spectrum both from a cost and speed of deployment perspective. Even more importantly, the additional spectrum held by ALLTEL in particular CMAs will allow Verizon Wireless to deploy new wireless broadband services (for which there is rapidly growing demand) and, in other areas, to enhance capacity that exists. In fact, with Verizon Wireless' EvDO Rev. A broadband offerings, the data throughput speeds available to subscribers depend upon the loading of the serving cell site and the available spectrum at the cell site. Greater spectrum availability, therefore, will translate into faster broadband access as demand for that service continues to grow.

By facilitating the continued deployment of wireless broadband in ALLTEL's rural territories, Verizon Wireless will further enhance the already competitive wireless data industry. Analysts expect strong growth in wireless data over the next several years.³⁸ Laptops already

³⁸ See Mindbranch, *North American Wholesale Private Line Services Markets (June 2007)*, <http://www.mindbranch.com/North-American-Wholesale-R1-5920/> (last visited June 10, 2008) ("In 2006, wireless data revenues increased by approximately 84 percent over 2005, and ... the wireless data segment is bound to grow further.").

represent more than 50 percent of all PCs, and this percentage is expected to continue to grow.³⁹

But to take advantage of these developments, wireless carriers like Verizon Wireless require sufficient amounts of spectrum to support expanded service offerings that will stimulate growth in demand from additional customers and usage per customer. The proposed transaction will add to Verizon Wireless' ability to offer new broadband services in the overlap areas.

b. Synergies Will Increase Efficiency and Provide Economies of Scale and Scope

As discussed below, the proposed transaction will result in significant operational synergies driven by reduced capital and operating expense savings. Verizon Wireless expects to realize synergies with a net present value, after integration costs, of approximately \$9 billion, including roaming expense savings, elimination of redundant facilities, and a reduction in sales, general, administrative, marketing and customer service costs. Synergies are expected to ~~generate incremental cost savings of \$1 billion in the second year after closing. These reductions~~ in cost will inure to the benefit of consumers.

(1) The Merger Will Provide Cost Savings Through Elimination of Roaming Costs Between ALLTEL and Verizon Wireless

At present, ALLTEL and Verizon Wireless are roaming partners on each others' CDMA networks, although both ALLTEL and Verizon Wireless also currently roam on other carriers' networks. The savings resulting from each company's roaming traffic moving onto the expanded Verizon Wireless network will be substantial. In addition, Verizon Wireless will be

³⁹ See Michael Kanellos, *Notebooks pass desktops in U.S. retail* (Feb. 1, 2006), CNET News.com at http://news.com.com/2100-1044_3-6033967.html (last visited June 10, 2007) ("Notebooks accounted for 50.9 percent of personal computers bought at retail in 2005, while desktops accounted for 49.1 percent."); Agam Shah, *Retailers increasingly boost notebook sales* (Mar. 9, 2008), PC World, at <http://pcworld.about.com/od/notebooks/Retailers-increasingly-boost-n.htm> (last visited June 10, 2008) ("[n]otebook shipments totaled 33 million in the fourth quarter of 2007, growing 41 percent.").

able to save the costs currently incurred by both companies as a result of having to administer the companies' roaming agreements. The FCC previously has found that savings on roaming costs inure to the benefit of consumers and are an important factor in judging the benefits of a merger or acquisition.⁴⁰

(2) The Integration of the ALLTEL and Verizon Wireless Networks Resulting from the Proposed Merger Will Result in Significant Cost Savings

~~ALLTEL~~ currently operates CDMA networks in various CMAs. After consummation, Verizon Wireless will quickly integrate these networks into its pre-existing network. The transition can proceed quickly, given the compatibility of the equipment with Verizon Wireless' existing CDMA network. Deployment is clearly expedited through the acquisition of an existing network, as opposed to acquiring bare spectrum and having to build it out. In those markets where Verizon Wireless already provides facilities-based service, substantial cost savings may also be achieved through the elimination of redundant cell sites and transport facilities. Some of the assets will be able to be redeployed to accelerate and reduce the costs of build-out in other areas. Verizon Wireless expects the combined companies' increased scale will provide significant purchasing volume benefits as well.

(3) The Proposed Transaction Will Reduce Advertising and Administrative Costs

As a result of the integration of the ALLTEL and Verizon Wireless customer bases, the advertising and administrative costs associated with servicing customers will be reduced. For

⁴⁰ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,605 (¶ 219) (finding that reductions in marginal costs for wireless carriers are "likely to benefit consumers through lower price and/or increased service."); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,108 (¶ 151) ("ALLTEL's merger with WWC would reduce its roaming costs in geographic markets where ALLTEL and WWC's service areas do not overlap, and the elimination of roaming agreements in these markets would directly benefit ... its customers.").

example, since Verizon Wireless advertises on a virtually nationwide basis, substantial savings will be achieved by absorbing ALLTEL advertising expenses into Verizon Wireless' existing advertising efforts. The savings will be most significant in areas where Verizon Wireless already targets customers. Savings will also result from closing duplicate store and administrative office locations and eliminating duplicative administrative expenses.

The integration of ALLTEL's billing system into Verizon Wireless' in-house system should also result in a substantial reduction in expenses. Verizon Wireless additionally offers "my account" options that deliver significant benefits to customers (like free back-up protection for saved phone contacts) and a new handset at promotional prices on an accelerated basis that are not offered by ALLTEL. As ALLTEL's customers take advantage of these convenient services, further savings will follow. Indeed, Verizon Wireless continues to lead the industry in cost efficiency.⁴¹

4. The Proposed Merger Will Result in the Formation of a Stronger Competitor in Today's Highly Competitive CMRS Segment

The merger of ALLTEL's wireless properties into Verizon Wireless will create a stronger and more efficient wireless competitor with greater coverage in an industry where broad coverage has proven to be paramount in attracting customers and driving competition. Vigorous competition, in turn, will benefit all consumers in the combined company's footprint—including customers of ALLTEL and Verizon Wireless—by encouraging better quality of service, more choices in service, applications, rate plans, and wireless devices, and lower prices.

The benefit to competition will be especially pronounced in ALLTEL areas not currently served by Verizon Wireless. There, a new national provider will be available to provide

⁴¹ See Press Release, Verizon Reports Continued Strong Growth in 1Q 2008, Apr. 28, 2008, at <http://news.vzw.com/news/2008/04/pr2008-04-28.html> (last visited June 10, 2008).

consumers with enhanced choices in both equipment and service. Consumers in the ALLTEL areas will be able to select from Verizon Wireless' broader variety of data services and content offerings in addressing their communications needs. With a wider menu of options to choose from—including Verizon Wireless' award winning service—the Applicants would expect greater competitive pressure to be exacted upon existing competitors. The enhanced competition, obviously, inures to the benefit of all customers in the combined company's footprint, whether or not they choose to have their wireless needs met by the combined company.

The merger of ALLTEL and Verizon Wireless also will make Verizon Wireless a more vigorous competitor in the provision of wireless broadband services—an area where the national carriers have made significant investments in the past and continue to expand their offerings. Clearly, AT&T Mobility, Sprint and T-Mobile are strong national competitors, with AT&T having the largest customer base of any company. All three companies are actively deploying 3G and 4G networks.⁴²

In addition, a new competitor will soon be entering the wireless broadband market. Sprint Nextel and Clearwire recently announced a deal with cable providers Time Warner, Comcast and Bright House, chipmaker Intel, and Google, under which Sprint Nextel's and Clearwire's next generation wireless broadband businesses will be combined to form a new wireless communications company.⁴³ The combined company will have access to an average of

⁴² See, e.g., Press Release, T-Mobile USA, Inc., T-Mobile USA Begins Commercial 3G Network Rollout (May 5, 2008), http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080505&title=T-Mobile%20USA%20Begins%20Commercial%203G%20Network%20Rollout (last visited June 9, 2008); Press Release, AT&T, AT&T Nears Completion of 3G Wireless Technology Deployment That Delivers Broadband Wireless Speeds – For Downloads and Uploads (May 21, 2008), <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25726> (last visited June 9, 2008).

⁴³ Sprint and Clearwire to Combine WiMax Businesses, Creating a New Mobile Broadband Company, News Release (May 7, 2008),

150 MHz in the top 100 markets and an average of 100 MHz in areas outside the top 100 markets⁴⁴—making it the largest spectrum holder in the United States.⁴⁵ The merger of ALLTEL and Verizon Wireless will enable Verizon Wireless to compete more effectively with this significant new player, as well as the existing players in the CMRS segment.

C. The Proposed Merger Will Not Significantly Harm Competition in Any Product Market

The proposed transaction's combination of Verizon Wireless' and ALLTEL's largely complementary assets and capabilities will result in a truly nationwide provider that is able to compete aggressively across the country. This is significant because the wireless business today is increasingly national in scope with four major national providers competing vigorously through pricing plans and service offerings that are national in scope. These providers include AT&T Mobility, currently the largest provider in terms of customers, which has itself assembled an increasingly nationwide reach; T-Mobile, which recently announced that it has begun the roll-out of its third generation wireless network; and Sprint/Nextel, which with its partners in the recently announced nationwide Clearwire venture has promised to leapfrog existing services. This transaction will do nothing to undermine that existing vigorous competition. Rather, it will plainly promote it by offering consumers broader access to the many benefits, discussed in II(B), that this merger makes possible; thus increasing the competitive pressures on rivals to offer

http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1141088&highlight=clearwire (last visited June 10, 2008).

⁴⁴ "New Wireless Venture Seen Drawing Scant Regulatory Scrutiny," *Communications Daily*, at 4 (May 8, 2008) ("*May 8, 2008 Comm. Daily Article*").

⁴⁵ See "Sprint-Clearwire: Hesse: Spectrum Combo Puts New WiMax JV Two Years Ahead of Competition," *Washingtonpost.com* (May 7, 2008), available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050701164.html>; Stifel Nicholas, "S, CLWR, Cable, Google Jump Start WiMax Drive; Time to Market Key" (May 7, 2008).

consumers innovative, pro-competitive services and policies of their own. Moreover, as explained in the discussion below, even applying the Commission's traditional geographic area by geographic area analysis, the transaction will provide these benefits without material harm to competition in any geographic or product market.

1. The Analytical Framework

a. The Geographic Scope and Nature of the Relevant Product Market

As the Commission has explained, “[m]ergers raise competitive concerns when they reduce the availability of choices to the point that the merged firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices.”⁴⁶ In other words, the FCC’s concerns are triggered by market power, and the analysis of market power “begin[s] by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants.”⁴⁷ As discussed herein, the Applicants have analyzed the proposed transaction under the Commission’s typical product market definition—a definition that combines interconnected voice and data services, as well as residential and enterprise services, in a “combined market for mobile telephony service.”⁴⁸

⁴⁶ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,539 (¶ 22); *Sprint-Nextel Order*, 20 FCC Rcd at 13,981 (¶ 30); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,066 (¶ 22); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,556 (¶ 68); Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1 (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”), at http://www.usdoj.gov/atc/guidelines/horiz_book/hmg1.html (last visited Aug. 26, 2007).

⁴⁷ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,541 (¶ 25); *Sprint-Nextel Order*, 20 FCC Rcd at 13,981 (¶ 32); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,067 (¶ 24); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,557 (¶ 70).

⁴⁸ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,541 (¶ 26); *Sprint-Nextel Order*, 20 FCC Rcd at 13,983 (¶ 38); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,068 (¶ 29); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,558 (¶ 74).

The Applicants have also undertaken the competitive analysis utilizing the smaller geographic basis used by the FCC in prior wireless merger proceedings—CMAs.⁴⁹ Although the Applicants have utilized CMAs for purposes of analyzing this transaction in the interest of expedited processing, the market for mobile telephone service is, in fact, increasingly national in scope. While a national geographic scope has been rejected in certain prior merger proceedings, growing national forces—such as the increasing reliance on national rate plans—argue more and more for redefining how the Commission judges the competitive effects of transactions.⁵⁰ In such regard, the 12th *Annual Competition Report* observes that “[t]he basic economic principle for defining the scope of the relevant geographic market is to include two mobile services in the same product market if they are essentially interchangeable from the perspective of most consumers—that is, if consumers view them as close substitutes.”⁵¹ Like other national carriers, Verizon Wireless primarily prices—and advertises—on a national basis, leaving very little room for local (or even regional) variation in pricing.⁵² Most prices are set on a national level, and

⁴⁹ The FCC has used “two sets of geographic areas that may be used to define local markets—Component Economic Areas (‘CEAs’) and [CMAs].” See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,542 (¶ 29); *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 (¶ 57); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,072-073; (¶¶ 44-45); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,567-568 (¶¶ 104-105).

⁵⁰ On a national basis, it is clear that the proposed transaction will have no negative impact on competition. The FCC’s 12th *Annual Competition Report* recognizes that there are four national mobile telephone operators—AT&T, Inc., Verizon Wireless, Sprint Nextel Corp. and T-Mobile USA. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Twelfth Report, 23 FCC Rcd 2241, 2254-55 (¶ 18) (“12th Annual Competition Report”). The proposed transaction will not diminish the number of nationwide carriers.

⁵¹ 12th *Annual Competition Report*, 23 FCC Rcd at 22,534 (¶ 13).

⁵² Indeed, as of May 2008, approximately 90.4 percent of current Verizon Wireless subscribers have service plans based on national pricing, and close to 100 percent of new subscribers are enrolled in plans with national pricing.

therefore local market conditions are less relevant to a carrier's competitive strategy than are actions taken by other national carriers. In fact, because of the demand for national coverage, approximately 87 percent of the nation's mobile customers subscribe to a national carrier or an affiliate of a national carrier.⁵³ This figure supports the conclusion that consumers shop for national plans and shop national rates—all of which are set on a national level. Even if the Commission does not accept that mobile services operate in a market with a national scope, it is clear that strong national forces discipline competition in local markets.

b. Identification of Participants in the Relevant Product Market

In order to identify market participants, the FCC typically evaluates “whether spectrum is within the input market for mobile telephony service by examining its suitability for mobile voice service,” an analysis that revolves around specific spectrum bands’ “physical properties, the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.”⁵⁴ In the *AT&T-Dobson Order*, the FCC first noted that it had previously included “only cellular, broadband PCS, and . . . SMR . . . spectrum, which totals approximately 200 MHz,” and then determined that “the input market also includes . . . an additional 80 MHz of . . . 700 MHz spectrum . . . , bringing the total amount of spectrum suitable for mobile telephony nationwide to approximately 280 MHz.”⁵⁵

⁵³ 12th Annual Competition Report, 23 FCC Rcd at 2362 (Table A-4).

⁵⁴ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31); *Sprint-Nextel Order*, 20 FCC Rcd at 13,992 (¶ 61); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,071 (¶ 41); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,560-61 (¶ 81).

⁵⁵ *AT&T-Dobson Order*, 22 FCC Rcd at 20,312 (¶¶ 27, 30). As a result, the FCC “revise[d] the spectrum aggregation screen to 95 MHz, approximately one-third of the 280 MHz of the spectrum suitable for mobile telephony today.” *Id.* at 20,313 (¶ 30).

The Applicants agree that the range of input spectrum should include cellular, PCS, ESMR and 700 MHz bands. However, the Applicants believe strongly this should not be the only spectrum considered in defining the product market. Significant changes have occurred recently that warrant revisiting prior FCC conclusions about whether to include certain additional bands—and the competitors in them—in the analysis.⁵⁶ Indeed, the spectrum input market for the current spectrum screen comprises less than half the spectrum currently available and being used (or ~~imminently to be used~~) for comparable wireless services. As the Commission itself has noted, “the Commission may from time-to-time need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.”⁵⁷ As discussed below, recent developments warrant the agency’s re-evaluation of the relevant input spectrum.⁵⁸

First, developments in the Broadband Radio Service/Educational Broadband Service (“BRS/EBS”) 2.5 GHz spectrum have mooted the Commission’s previously articulated basis for

⁵⁶ *AT&T-Dobson Order*, 22 FCC Rcd at 20,314 (¶ 32) (stating “we conclude that neither AWS-1 spectrum (1710-1755 MHz and 2110-2155 MHz) nor BRS spectrum is available on a nationwide basis. In many markets, this spectrum is currently committed to another use that effectively precludes its use for mobile telephony, and it is unclear whether it will be available for mobile use in the sufficiently near-term”).

⁵⁷ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31 & n.129). In the *700 MHz Order*, in fact, the FCC found that “[t]here is potential for additional entry into the broadband market by carriers operating on spectrum in the . . . Advanced Wireless Service (AWS), Broadband Radio Service (BRS), and 3650-3700 MHz bands.” See also *Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Commc’n, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 14,863, 14,878-879 (¶ 30) (2006) (stating “We do, however, anticipate that sometime in the near future, as [700 MHz and AWS-1] spectrum becomes available for more immediate use, as technological developments lead to performance and equipment advances, and as spectrum allocations are revised, the Commission will need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.”).

⁵⁸ At a minimum, consistent with its pronouncement in the *AT&T-Dobson Order*, the FCC must, “[i]n [its] detailed, case-by-case analysis of markets caught by the initial screen, . . . consider the extent to which AWS-1 or BRS licenses are in fact available *locally*, and if so, include them in the local spectrum input market.” *AT&T-Dobson Order*, 22 FCC Rcd at 20,315 (¶ 35).

omitting this spectrum from the product market.⁵⁹ Most notably, the recently announced joint venture between Sprint Nextel and Clearwire (with strategic investors Google, Intel, and major cable television companies) “will compete head-to-head against the soon-to-be-launched 4G offerings of Verizon Wireless and AT&T.”⁶⁰ The companies plan to rapidly deploy in the BRS/EBS band “the first nationwide mobile WiMAX network to provide a true mobile broadband experience for consumers, small businesses, medium and large enterprises, public safety organizations and educational institutions.”⁶¹ Clearwire’s CEO stated that “[t]he 2.5 GHz band is best for mobile broadband services due to channel size and propagation characteristics,” and that “[i]t’s ideal for broadband because high bandwidth wireless networks have to deliver capacity, not just coverage.”⁶² According to the company’s fact sheet on the deal, “Clearwire expects to offer its mobile broadband services in urban, suburban and rural communities nationwide, with 60 to 80 million people covered by its network by the end of 2009, 120 to 140 million people covered by the network by the end of 2010, and the network ultimately covering

⁵⁹ In the *AT&T-Dobson Order*, the FCC concluded that BRS/EBS is not currently part of the input market for mobile telephony service because “the availability of BRS spectrum for new mobile uses depends on the ongoing transition process.” *AT&T-Dobson Order*, 22 FCC Rcd at 20,315 (¶ 34). See also *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31 & n.129). In prior decisions the FCC based similar conclusions on a finding that the BRS/EBS spectrum “is currently subject to rebanding requirements.” The BRS/EBS services have matured substantially, however, in the seven months since the *AT&T-Dobson Order*. Indeed, with respect to the transition, as of May 26, 2008, the transition has been certified complete for 70 percent of the US POPs, and transition plans have been filed covering two-thirds of the remaining POPs.

⁶⁰ Applications of Sprint Nextel Corporation and Clearwire Corporation, ULS File No. 0003368272 (LEAD) (filed June 6, 2008), Description of the Transaction and Public Interest Statement (“*Clearwire Application*”) at 16.

⁶¹ Clearwire Connections Home Page, <http://www.clearwireconnections.com/pr/> (last visited June 4, 2008).

⁶² *New Wireless Venture Seen Drawing Scant Regulatory Scrutiny*, Communications Daily (May 8, 2008).

more than 200 million people across the U.S.”⁶³ The companies note that the mobile WiMax technology they plan to utilize will operate at “speeds fast enough to conduct two-way video conference calls, participate in online multiplayer games, and download multimegabit files in an instant—speeds that, until now, only *wireline* broadband services providers could offer.”⁶⁴

The Sprint-Clearwire Application for approval of the venture states that the new Clearwire “will be an effective new entrant in a rivalrous marketplace, offering broadband service that will compete with numerous established players offering mobile and fixed broadband services”⁶⁵—a clear statement of their intention to compete against Verizon Wireless, AT&T, T-Mobile and other cellular, PCS and 700 MHz spectrum holders. Indeed, Dan Hesse, Sprint’s CEO, stated that “[t]he new Clearwire . . . will have an enviable 40 billion MHz pops position,’ which is ‘the largest spectrum position owned by one company’”—and “[t]hat puts

⁶³ UPDATE 1- Clearwire outlines growth for new Sprint venture, Reuters.com, June 12, 2008, at <http://www.reuters.com/article/mediaNews/idUSN1241590520080612> (last visited June 12, 2008); Clearwire Connections, Clearwire Transaction Announcement Fact Sheet, at <http://www.clearwireconnections.com/pr/factsheets/documents/FactSheet052708.pdf> (last visited June 4, 2008). Notably, this is consistent with regulatory requirements for build-out imposed in the 2005 *Sprint-Nextel Order*. That order conditioned the consummation of that transaction on the merger parties complying with certain construction benchmarks for the BRS/EBS band. Letter from Sprint/Nextel to FCC (Aug. 2, 2005); *see also Sprint-Nextel Order* 20 FCC Rcd at 14,036 (¶ 192). Under the merger condition, Sprint Nextel is required—by August 8, 2009, approximately a year from now—to “offer service in the 2.5 GHz band to a population of no less than 15 million Americans, [including] . . . areas within a minimum of nine of the nation’s most populous 100 Basic Trading Areas (BTAs) and at least one BTA less populous than the nation’s 200th most populous BTA.” In these ten BTAs, the deployment must “cover at least one third of each BTA’s population.” *Id.* at 14,028 (¶ 164).

⁶⁴ *Clearwire Applications* at 16 (emphasis in original, footnotes omitted); *see also* “Sprint and Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company,” News Release (May 7, 2008), available at http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_Print_newsroom&ID=1141088&highlight= (stating network will operate “multiple times faster than today’s 3G wireless networks”).

⁶⁵ *Id.* at 35; *see also id.* at 16 (stating the venture “will compete head-to-head against the soon-to-be-launched 4G offerings of Verizon Wireless and AT&T”); *id.* at 53 (stating “Clearwire will face competition from 4G service providers using 700 MHz spectrum”).

them at least two years ahead of the competition.”⁶⁶ On this basis, the 186 MHz of BRS/EBS spectrum and its licensees must be considered competitors in the relevant product market.

Second, the Applicants believe the FCC’s prior decision not to include Advanced Wireless Services (“AWS”) spectrum has been overtaken by events. In the *AT&T-Dobson Order*, the Commission declined to consider AWS licensees to be participants in the mobile telephony market, concluding that “[t]he AWS-1 spectrum is not generally available for mobile use as yet due to the ongoing clearance of governmental and non-governmental incumbent users . . . [and] the clearance process has no single timetable.”⁶⁷ Recently, however, a number of licensees have, in fact, initiated service using the AWS band frequencies. For example, T-Mobile USA has “recently launched broadband AWS-1 operations in the New York market and plans to roll out service in 25 markets by the end of 2008.”⁶⁸ MetroPCS has launched AWS in

⁶⁶ Sprint CEO Dan Hesse, quoted in Tricia Duryee, “Sprint-Clearwire: Hesse: Spectrum Combo Puts New WiMax JV Two Years Ahead of Competition,” *Washingtonpost.com* (May 7, 2008), available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050701164.html> (last visited June 10, 2008). See also Press Release, Sprint and Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company (May 7, 2008), at <http://www.clearwireconnections.com/pr/pressreleases/050708.pdf> (last visited June 4, 2008) (“the new Clearwire will have a time-to-market advantage over competitors in fourth-generation services, supported by strong spectrum holdings and a national footprint.”).

⁶⁷ *AT&T-Dobson Order*, 22 FCC Rcd at 20,314 (¶ 33); see also *ALLTEL-Midwest Order*, 21-FCC Rcd at 11,543 (¶ 31 & n.129) (stating “it is still premature to classify the AWS spectrum as suitable for the provision of mobile telephony for purposes of our analysis here”).

⁶⁸ Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-195 (June 4, 2008) (regarding meeting with FCC’s Office of Engineering and Technology). See also Press Release, T-Mobile USA, Inc., T-Mobile USA Begins Commercial 3G Network Rollout (May 5, 2008), at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080505&title=T-Mobile%20USA%20Begins%20Commercial%203G%20Network%20Rollout (last visited June 4, 2008) (announcing that the company has “launch[ed] its UMTS/HSDPA network in New York City,” and that it “plans to continue the rollout of its 3G network across major metropolitan markets through the year [and,] [b]y year’s end, . . . expects its high-speed data network will be available in those cities where a majority of its subscribers currently use data services”).

Las Vegas, Nevada, and recent press reports indicate that numerous other areas are to follow, with “[t]he crown jewel of its footprint, New York, . . . go[ing] live before the end of the 2nd quarter.”⁶⁹ Notably, at the time that service area is launched, “almost half of Metro’s covered pops will be in AWS networks.”⁷⁰ Other carriers, such as LEAP Wireless and Stelera, have also been reported to have launched commercial services in the AWS bands.⁷¹ Given the substantial roll-out of wireless broadband services in this band, there is no basis to continue to exclude the 90 MHz of AWS spectrum from the input-product market. This is particularly the case since the Commission determined to include 700 MHz spectrum as input spectrum before the vast majority of it was licensed and more than a year before the spectrum was cleared for deployment of wireless services.⁷²

The Applicants also believe that the Commission should revisit its previous conclusion to “exclude satellite carriers, wireless VoIP providers, MVNOs [Mobile Virtual Network Operators], and resellers from consideration when computing initial measures of market

⁶⁹ Kevin Fitchard, MetroPCS to Complete AWS Shift in One Year, TelephonyOnline, May 9, 2008, at <http://telephonyonline.com/wireless/news/metropcs-leap-aws-0509/> (last visited June 4, 2008).

⁷⁰ *Id.*

⁷¹ Press Release, Leap Wireless International, Inc., Leap Launches First Advanced Wireless Services (AWS) Market with Full Capacity Retail and Network Introduction of Cricket Unlimited Wireless Service to Oklahoma City (Mar. 31, 2008), at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1123363&highlight=> (last visited June 4, 2008); Press Release, Stelera Wireless, Stelera Wireless Launches Inaugural Wireless Network Providing High Speed Internet in Rural America (Feb. 8, 2008), at <http://www.stelerawireless.com/Portals/0/docs/2.08.08%20Stelera%20Wireless%20Launches%20Inaugural%20Wireless%20Network,%20Providing%20High%20Speed%20Internet%20in%20Rural%20America.pdf> (last visited June 4, 2008).

⁷² Additionally, the Commission determined to include PCS spectrum in the CMRS spectrum cap (the screen’s predecessor) well before that spectrum was cleared and available for deployment of competitive CMRS services.

concentration.”⁷³ The inclusion of satellite providers with Ancillary Terrestrial Component (“ATC”) authority is especially appropriate. Mobile Satellite Ventures (“MSV”) has already received ATC authority, and MSV “is currently authorized to use approximately 30 MHz of coordinated North American spectrum in a terrestrial wireless network with an integrated satellite overlay to provide ubiquitous and enhanced services.”⁷⁴ Globalstar, Inc. (“Globalstar”), a 1.6/2.4 GHz MSS provider, also recently announced that the FCC had expanded its ATC authority to include almost 20 MHz of spectrum, and noted that the company had “an agreement with Open Range Communications Inc. (“Open Range”) permitting Open Range to deploy wireless broadband service in rural America using Globalstar’s ATC authority.”⁷⁵ The press release further notes that Open Range had secured “a \$267 million broadband service loan from the Department of Agriculture’s Rural Utilities program,” and proposes “to use the Globalstar spectrum to deploy wireless WiMAX services to over 500 rural American communities.”⁷⁶ Additionally, “[t]he FCC has assigned 20 MHz of 2 GHz MSS spectrum to ICO [Global Communications (“ICO”), a 2 GHz mobile satellite service (“MSS”) provider,] with geographic coverage of all 50 states in the United States, as well as Puerto Rico and the U.S. Virgin

⁷³ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,544 (¶ 33); *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 (¶ 58); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,070-71 (¶¶ 38-39); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,564 (¶ 92).

⁷⁴ Mobile Satellite Ventures Website, Investor/Financial Company Fact Sheet, <http://www.msvlp.com/investor/fact-sheet.cfm> (last visited June 4, 2008).

⁷⁵ Press Release, Globalstar, Inc., FCC Expands Globalstar’s Ancillary Terrestrial Component Authority (Apr. 10, 2008), at http://www.globalstar.com/en/news/pressreleases/press_display.php?pressId=481 (last visited June 4, 2008).

⁷⁶ *Id.*

Islands.”⁷⁷ ICO recently filed for blanket authority to operate ATC base stations in that 20 MHz of spectrum.⁷⁸ TerreStar also has pending a request for ATC authority.⁷⁹ These ATC services clearly have the capability to compete with services provided over spectrum already included in the relevant product market and are receiving serious financial backing.⁸⁰ Given these developments, any spectrum input analysis should, at a minimum, consider the nearly 90 MHz of ATC spectrum as input spectrum for the analysis.

The Commission is also poised to license a new nationwide wireless broadband competitor in the 2155-2175 MHz band.⁸¹ Based upon press reports, the Commission is readying an order to license this spectrum to a single entity on a nationwide basis. The entity will be required to provide a minimum level of wireless broadband services (at 768 kbps) for free to the public.⁸² It will also be permitted to charge a fee for higher speed broadband services.⁸³ It

⁷⁷ ICO Website, MSS/ATC System, http://www.ico.com/_about/tech/na_mss_atc.php (last visited June 4, 2008).

⁷⁸ See Report No. SES-01012, *FCC Public Notice* (rel. Mar. 5, 2008). Craig McCaw has attributable interests in both the Clearwire venture and ICO.

⁷⁹ See Report No. 01018, *FCC Public Notice* (rel. Mar. 26, 2008).

⁸⁰ See “TerreStar Announces Strategic Investment by EchoStar, Harbinger & Other Investors—Transaction Facilitates Funding through Satellite Launch and will Enhance TerreStar’s Nationwide Spectrum Footprint,” News Release (Feb. 7, 2008), available at <http://www.terrestarnetworks.com/news/press/index.html> (noting commitment of \$300 million in investments in TerreStar, which is building the nation’s first integrated mobile satellite-terrestrial (MSS/ATC) communications network); “Mobile-Satellite Ventures and SkyTerra Communications Enter Into an Agreement for a \$150 Million Financing,” News Release (Dec. 17, 2007), available at <http://www.msvlp.com/media/press-releases-view.cfm?id=157&yr=2007> (noting that MSV is “developing a hybrid satellite-terrestrial communications network, which . . . will provide seamless, transparent and ubiquitous wireless coverage of the United States and Canada to conventional handsets”).

⁸¹ See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking WT Docket No. 07-195 (rel. Sept. 19, 2007).

⁸² See “Martin’s Free Broadband Plan May Face Commission Opposition,” *Communications Daily*, June 2, 2008.

is reported that the Commission will adopt service rules for this spectrum in July and proceed to auction it by year end.⁸⁴ This new licensee will be an additional competitor in the segment.

Finally, the Applicants also believe that the national resellers/MVNOs that compete successfully on the strength of uniquely packaged voice and data services using their own proprietary brand names should also be considered as legitimate market participants. The Commission itself has found in other contexts that wireless resellers provide additional competition.⁸⁵ Some MVNOs are formidable competitors—TRACFONE, for example, serves over 6.5 million customers nationally through resale, while Virgin Mobile serves over 4.8 million customers and, as of March 31, 2007, Boost Mobile served nearly 4.3 million customers nationally, including customers in virtually all of the subject areas. Qwest Wireless resells wireless plans in 14 states, all but two of which (Oregon and Washington) are included in the overlap geographic license areas. Cable operators are also expected to bundle wireless together with their video and VoIP offerings. The Commission should consider these providers to be participants in the relevant product market as well.

⁸³ See *id.*

⁸⁴ See “Martin Pulls AWS-3 Order from June Agenda, Wants July Vote,” *Communications Daily*, June 9, 2008.

⁸⁵ See, e.g., 2000 Biennial Regulatory Review, *Spectrum Aggregation Limits for Commercial Mobile Radio Servs.*, Report and Order, 16 FCC Rcd 22,668, 22,690 (¶ 42) (2001) (“[C]arriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (‘MVNO’) arrangement.”); *id.* at 22,690 n.45 (The MVNO arrangement “is one in which ‘a network operator acts as a wholesaler of airtime to another firm, which then markets itself to users just like an independent operator with its own network infrastructure.’”); see also J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004) (“[T]here may be five or more large scale companies reselling wireless service by 2005, along with the five facilities-based wireless providers (post the Cingular/AT&T Wireless transaction).”).

c. Initial Screen

In prior mobile transactions, the Commission has used an initial “screen” to focus its competitive inquiry. Specifically, the Commission looks at markets where:

- the post-transaction Herfindahl-Herschman Index (“HHI”) would be greater than 2800 and the change in HHI would be 100 or greater;
- the change in HHI would be 250 or greater regardless of the level of the HHI; or
- post-transaction, the Applicants would hold 95 megahertz or more of spectrum.⁸⁶

As discussed above, there are compelling reasons for increasing the spectrum-related part of the initial screen given the other spectrum bands currently, or soon to be, used for competitive CMRS services. At a minimum, the screen must be increased to reflect the inclusion of BRS/EBS, MSS ATC and AWS spectrum in the spectrum screen analysis. Recent developments with respect to the BRS/EBS band—particularly Clearwire’s announced plans for rapid deployment of an extensive mobile broadband network that Clearwire has stated will surpass what is available today—make clear that this spectrum and its licensees must be considered in the competition analysis for the relevant product market. There is also plainly no valid reason to continue to exclude the AWS or MSS ATC spectrum from the analysis.

In view of the new spectrum realities, the Commission should modify the spectrum screen. Given the vibrantly competitive CMRS market, all of the new spectrum recently made available for such services, and the continual launch of innovative mobile broadband services

⁸⁶ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20,318 (¶ 40); see also *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,546 (¶ 36); *Sprint-Nextel Order*, 20 FCC Rcd at 13,993 (¶ 63); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,073 (¶ 46); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,568 (¶ 106). Consistent with the discussion in the preceding section, the amount of spectrum now available for commercial wireless spectrum dictates a revision of the 95 MHz trigger. The Commission set 95 MHz as the threshold amount for review when there was only 280 MHz of commercial spectrum available for similar services. Today, however, the availability of BRS/EBS, MSS ATC and AWS spectrum raises that amount to over 600 MHz. Accordingly, the Commission should raise the initial trigger substantially.

within existing allocations, there is no continued basis for the current method of analysis. Indeed, counting 50 MHz of cellular, 120 MHz of 1.9 GHz PCS, Sprint's 10 MHz "G" Block, 20 MHz of enhanced SMR, 80 MHz of 700 MHz, 186 MHz of BRS/EBS, 90 MHz of AWS-1,⁸⁷ and 90 MHz of MSS ATC, there is a tremendous amount of spectrum—more than 600 MHz—available for competitive CMRS services. Considering the deployment of facilities-based services on this array of spectrum, there are a huge number of existing and potential competitors, augmented by wireless VoIP providers, MVNOs, and resellers. Against that background, there is no basis for establishing a screen at 95 MHz. Further, there is no basis for any competitive concern regarding the instant transaction.

Even assuming *arguendo* that additional competitive CMRS spectrum should not be considered, the transaction does not harm competition under the current initial screen standard. In Exhibit 4, the Applicants have provided a chart detailing the amount of spectrum attributable to the post-transaction Verizon Wireless in the ALLTEL CMAs. Exhibit 5 provides a list of competitors operating in the overlap markets utilizing cellular, PCS, 700 MHz and AWS spectrum.

2. The Proposed Merger Will Not Result in Competitive Harms

a. As the Commission Has Found, Competition for Mobile Subscribers Is Extremely Robust

The Commission's most recent report on CMRS competition found that "there is effective competition in the CMRS marketplace,"⁸⁸ observing that:

[a]s of July 2007, 280 million people, or 98 percent of the total U.S. population, have three or more different operators (cellular, PCS, and/or digital SMR)

⁸⁷ There are at least another 20, if not 40, MHz of spectrum being considered for the provision of AWS.

⁸⁸ 12th Annual Competition Report, 23 FCC Rcd at 2245 (¶ 1).

offering mobile telephone service in the counties in which they live. Roughly 267 million, or 94 percent of the U.S. population, live in counties with four or more mobile telephone operators competing to offer service. . . . [T]he percent of the U.S. population living in counties with five or more mobile telephone operators . . . grew by 16 percent in the past year.⁸⁹

In the FCC's data gathering process, more than 150 companies identified themselves as terrestrial mobile wireless carriers.⁹⁰ The Commission noted that, in addition to these operators, "the CMRS industry also includes mobile telephone resellers and [MVNOs], mobile satellite service providers, and various broadband and narrowband data service providers."⁹¹ The report explained that this determination that effective competition exists, as well as the consumer benefits achieved through effective competition, also extends to rural areas.⁹²

The report additionally documented the beneficial impact of robust competition for U.S. subscribers, noting that "U.S. consumers continue to reap significant benefits—including low prices, new technologies, improved service quality and choice among providers—from competition in the [CMRS] marketplace, both terrestrial and satellite CMRS."⁹³ The report declared that,

"[t]he continued rollout of differentiated pricing plans also indicates a competitive marketplace. In the mobile telephone sector, we observe independent pricing behavior, in the form of continued experimentation with varying price levels and structures, for varying service packages, with various handsets, and policies on handset pricing."⁹⁴

⁸⁹ *Id.*, 23 FCC Rcd at 2265 (¶¶ 44-45).

⁹⁰ *Id.*, 23 FCC Rcd at 2245 (¶ 2).

⁹¹ *Id.*, 23 FCC Rcd at 2246 (¶ 2).

⁹² *Id.*, 23 FCC Rcd at 2291 (¶ 110). The report states that the average number of competitors in rural areas has remained generally unchanged in the last 4 years. *Id.*, 23 FCC Rcd at 2289 (¶ 105).

⁹³ *Id.*, 23 FCC Rcd at 2245 (¶ 1).

⁹⁴ *Id.*, 23 FCC Rcd at 2292 (¶ 112).

The report went on to note one analyst's observation that the "price per-minute is off 10% the past year, 20% over the past two years and 40% over the past three years."⁹⁵ The report further noted that "[s]ervice providers in the mobile telecommunications market also compete on many more dimensions other than price, including non-price characteristics such as coverage, call quality, data speeds, and mobile data content."⁹⁶ Moreover, the constant prospect of dissatisfied customers switching providers, the ease of which has grown significantly since the Commission's adoption of local-number portability rules for wireless service, ensures the existence of a competitive wireless marketplace focused on meeting the pricing and service needs of consumers.⁹⁷

If anything, competition has become even more robust since the *12th Annual Competition Report*. First, in the intervening time, the "new" Clearwire venture was formed, as previously discussed. According to the company, the new Clearwire has "the largest spectrum position owned by one company," as well as the backing of Sprint Nextel, the country's third largest mobile carrier; Google, the world's dominant internet search engine and diversified information technology company; Intel, the world's largest supplier of semiconductor chips⁹⁸; as well as Comcast, Time-Warner, and Brighthouse, respectively the country's largest, second largest, and sixth largest cable television companies. The Clearwire venture plans to serve a substantial portion of the U.S. population by the end of 2009, and must be considered a strong entrant in the mobile marketplace.

⁹⁵ *Id.*, 23 FCC Rcd at 2321-22 (¶ 195).

⁹⁶ *Id.*, 23 FCC Rcd at 2297 (¶ 124).

⁹⁷ *Id.*, 23 FCC Rcd at 2317-18 (¶ 183).

⁹⁸ iSuppli.com, Competitiveness Separates Winners from Losers in 2007 Semiconductor Market (Nov. 27, 2007), <http://www.isuppli.com/news/default.asp?id=8675> (last visited June 9, 2008).